FILE COPY.

Office Supreme Court, U. S.
FILED.
NOV 5 1906
JAMES H. McKENNEY,
CLERK.

No. **103.**

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D., 1906.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH.
Plaintiff in Error.

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois

Brief and Argument on behalf of the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, Plaintiff in Error.

CHARLES H. ALDRICH,
HENRY S. McAULEY,
ATTORNEYS FOR PLAINTIFF IN ERROR.

LAWRENCE MAXWELL, JR.,
OF COUNSEL.

BARNARD & MILLER, PRINTERS, CHICAGO

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

No. 103.

THE BOARD OF EDUCATION OF THE KENTUCKY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH, *Plaintiff in Error,* *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	In Error to the Supreme Court of the State Illinois.

Brief and Argument on behalf of The Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church, Plaintiff in Error.

This writ of error is taken to reverse the action of the Supreme Court of Illinois affirming the judgment of the County Court of Cook County imposing a succession tax of $6,280.50 against the board of education of the Kentucky Annual Conference of the Methodist Episcopal Church. The opinion of the court appears in the record (pp. 28-32) and is reported in 216 Ill., 23.

Fanny Speed, a citizen and resident of Kentucky, died testate on August 10, 1902, seized of certain real property in Chicago, Illinois. By her last will

(Rec., 15-16), she made certain money bequests to build a new Methodist Church and parsonage in Louisville; also to certain church extension, foreign and home missionary societies; and after making disposition of pictures, plate, books, etc., it was provided (Rec., 16): "The other half of my estate given to the board of education of the Kentucky Annual Conference of the Methodist Episcopal Church to form a part of the educational fund of said conference, to be held, invested and administered for educational purposes by said board as other properties forming a part of said fund are held, invested and administered."

The board of education of the Kentucky Annual Conference of the Methodist Episcopal Church was organized by special act of the Legislature of the State of Kentucky, bearing date January 15, 1867, and entitled "An Act of Incorporation for the Board of Education of the Kentucky Annual Conference of the Methodist Episcopal Church". It stipulated in the record (Rec., 22) that the purposes for which the said corporation was organized as determined by the act of incorporation are:

"To form an educational fund to be styled the centenary educational fund, for the promotion of literature, education, art, morality and religion, within the bounds of said conference."

And it was likewise stipulated and agreed between counsel that the funds and income of the said corporation are required to be held, and are held, and used exclusively for educational and religious purposes, and that said corporation is not permitted to make dividends or distribution or profits or assets, among its members or stockholders.

And it was further stipulated upon the record, by the counsel for the respective parties, that the funds of said corporation are expended for the purposes for which it was organized wholly within the limits of the State of Kentucky, and that the said corporation does not have or maintain an office in the State of Illinois, or engage in educational or religious work therein.

And it was further stipulated and agreed by the parties that the succession of the property in Illinois, described in the inventory, will pass under the residuary or last clause of the will, heretofore introduced in evidence, and that there is sufficient personal property in the State of Kentucky to pay all of the indebtedness in that state, the expenses of administration in that state and the specific legacies mentioned in the will and codicils, and the only claimed indebtedness in Illinois are the damage suits mentioned in the testimony of Mr. McIlvaine (Rec., 23).

The appraiser reported the value of the estate passing under the clause above quoted to the Board of Education, as the appellant will hereinafter be designated for the sake of brevity, at $104,675.00 and imposed a succession tax of 6 per cent. of this amount (Rec., 14.)

From this action the Board of Education prosecuted an appeal to the County Court of Cook County, where the action of the appraiser was approved and judgment entered for $6,280.50, the amount of such tax. (Rec., 7-8.) From this action an appeal was prosecuted to the Supreme Court of the State of Illinois, which affirmed the action of the

lower court, to reverse which the present writ of error is prosecuted.

ASSIGNMENT OF ERRORS.

The errors assigned are as follows:

1. The court erred in holding this plaintiff in error liable to said tax of $6,280.50, because the imposition of a tax upon this plaintiff in error while corporations organized for like purposes under the laws of the State of Illinois are exempt, renders the act of May 10, 1901, amending an act entitled "An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same", approved June 15, 1895, void as to this plaintiff in error, and is in conflict with the Fourteenth Amendment to the Constitution of the United States, in that it abridges the privileges and immunities of this plaintiff in error, which is a citizen of the United States, deprives the plaintiff in error of its property witihout due process of law, and denies to this plaintiff in error the equal protection of the laws.

2. The court erred in holding said corporation liable to said tax of $6,280.50, for that said corporation is by reason of its organization and the purposes of said organization, as shown by the record in this case, exempt from such tax under the act of May 10, 1901, amending an act entitled "An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same;" approved June 15, 1895.

The questions thus presented were in the record

from the beginning, and were decided adversely to the contention of the plaintiff in error by the Supreme Court of Illinois.

BRIEF.

I.

The appellant, by probating the will through which its succession is derived, appearing before the state appraiser in the inheritance tax proceeding, appealing from the action of such appraiser to the County Court of Cook County, and from its action to the Supreme Court of Illinois, brought itself within the jurisdiction of the State of Illinois, within the meaning of the Fourteenth Amendment.

Black v. *Caldwell*, 83 Fed., 880, 885.

Christian Union v. *Yount*, 101 U. S., 352, 356.

(a) This is especially so as there are no rules prescribed by the laws of Illinois regarding the admission to the state of corporations *not* for pecuniary profit, and the right of such corporations to take and hold property in Illinois is fully established.

Santa Clara Female Academy v. *Sullivan*, 116 Ill., 375.

Christian Union v. *Yount*, 101 U. S., 352.

Pennsylvania Co. for Ins. on Lives v. *Bauerle*, 143 Ill., 459.

(b) The imposition of the succession tax necessarily implies that the person whose right to succeed is so taxed is within the jurisdiction of the State.

Passenger Cases, 7 How., 283, 422.

McGehees Due Process of Law, p. 218.

Dewey v. *Des Moines,* 173 U. S., 193, 204.

Louisville v. *Jeffersonville Ferry Co.,* v. *Kentucky,* 188 U. S., 385, 396.

Union Transit Co. v. *Kentucky,* 199 U. S., 194, 204.

The prohibitions of the Fourteenth Amendment extend to all state agencies, whether executive, legislative or judicial.

Scott v. *McNeal,* 154 U. S., 34, 45.

Chicago, etc., Ry. Co. v. *Chicago,* 166 U. S., 226, 234.

Missouri v. *Dockery,* 191 U. S., 165, 170.

Huntington v. *New York,* 118 Fed., 683, 686.

III.

An inheritance tax is not a tax upon property, but upon the privilege or right of succession to property.

United States v. *Perkins,* 163 U. S., 625, 628.

Magoun v. *Ill. Trust & Sav. Bank,* 170 U. S., 283, 258.

IV.

A different rule obtains as to claimed exemptions from a general and a special tax, to which latter class the imposition in the case at bar belongs.

Eidman v. *Martinez,* 184 U. S., 578, 583.
Catlin v. *Trustees,* 113 N. Y., 133, 140, 141.
In re Swift's Estate, 137 N. Y., 77, 86, 87.
Gurr v. *Scudds,* 11 Exch., 190.
U. S. v. *Wigglesworth,* 2 Story, 369.
U. S. v. *Watts,* 1 Bond, 580.

V.

It is conceded that the respective states have plenary power to regulate the tenure of property within their respective limits, the modes of its acquisition and transfers, the rules of its descent, and the extent to which a testamentary disposition may be exercised by its owners, subject, however, to the equal rights clauses of the Constitution of the United States.

Mager v. *Grima,* 8 How., 490, 493.
United States v. *Fox.,* 94 U. S., 315.
Magoun v. *Ill. Trust & Sav. Bank,* 170 U. S., 283, 292, 294.
Atchison, Topeka &c. Ry. Co. v. *Matthews,* 174 U. S., 96, 105.

VI.

The Constitution of the United States was largely the result of the demand that there should be no discrimination between the several states in commercial regulations and rights of persons or property.

Passenger Cases, 7 How., 283, 407, 449, 492.
Crandall v. *Nevada,* 6 Wall., 35, 43, 48.
Woodruff v. *Parham,* 8 Wall., 123, 140, 147
Hinson v. *Lott,* 8 Wall., 148, 152.

VII.

This court has repeatedly denied to the states the right of discrimination in the exercise of their sovereign power of taxation.

Ward v. *Maryland,* 12 Wall., 418, 430, 431.
Welton v. *State of Missouri,* 91 U. S., 275.
Tiernan v. *Rinker,* 102 U. S., 123.
Webber v. *Virginia,* 103 U. S., 344.
Walling v. *Michigan,* 116 U. S., 466.

VIII.

Corporations are not "citizens" within Article IV, Section 2, and the Fourteenth Amendment of the Constitution.

Blake v. *McCluny,* 172 U. S., 239, 259.
Orient Ins. Co. v. *Daggs,* 172 U. S., 557, 561.

IX.

Corporations are "persons" within the Fourteenth Amendment.

Pembina Mining Co. v. *Pennsylvania,* 125 U. S., 181, 189.

Home Ins. Co. v. *New York,* 134 U. S., 594. 606.

Charlotte, etc., R. R. Co. v. *Gibbes,* 142 U. S., 386, 391.

Covington, etc. Turnpike Co. v. *Sandford,* 164 U. S., 578, 592.

Gulf, etc., R. Co. v. *Ellis,* 165 U. S., 150, 154.

Smyth v. *Ames,* 169 U. S., 466, 522.

The right of a state to prescribe the terms and conditions upon which foreign corporations may transact business within its borders or to exclude such corporations altogether, is conceded subject to the limitation that unconstitutional requirements cannot be made.

The case at bar is to be distinguished from the general principle, however, in that the State of Illinois has not attempted through any agency to prescribe conditions upon which a foreign, religious or charitable corporation may succeed to property in Illinois.

Upon general proposition:

Ins. Co. v. *Morse,* 20 Wall., 445.

Doyle v. *Continental Ins. Co.,* 94 U. S., 535.

Barron v. *Burnside,* 121 U. S., 186.

Cable v. *United States Life Ins. Co.,* 191 U. S., 288, 306.

Dayton Coal & Iron Co. v. *Barton,* 183 U. S., 23, 24.

Security Mut. Life Ins. Co. v. *Prewitt,* 202 U. S., 246.

XI.

When the corporation or the property is within the jurisdiction of the state, it is entitled to the equal protection of the laws and different rates of taxation, either upon property or succession to property, cannot be applied as between foreign or domestic corporations.

Philadelphia Fire Assn. v. *New York,* 119 U. S., 110.

Erie Railway Co. v. *State,* 2 Vroom., 531, (S. C., 86 Am. Dec., 226, 236).

Barbier v. *Connolly,* 113 U. S., 27, 31.

Home Ins. Co. v. *New York,* 134 U. S., 594, 606.

Pembina Consolidated M. Co. v. *Pennsylvania,* 125 U. S., 181, 189.

New York v. *Roberts,* 171 U. S., 658, 663.

Blake v. *McClung,* 172 U. S., 239, 255.

Orient Ins. Co. v. *Daggs,* 172 U. S., 557, 566.

Yick Wo v. *Hopkins,* 118 U. S., 356, 369.

ARGUMENT.

The State of Illinois adopted the principle of the succession or legacy tax by act of its Legislature which went into effect on July 1, 1895. This act was entitled "An Act to tax gifts, legacies and inhertitances in certain cases, and to provide for the collection of the same". The first section of this act is as follows:

> "All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason of any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state; and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom

shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount, provided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes; and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars: Provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax."

By act approved May 10, 1901, the Legislature of Illinois passed an act entitled "An Act to amend an act entitled 'An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same, approved June 15, 1895; in force July 1, 1895;' by adding thereto an additional and new section exempting certain grants, gifts and bequests therein named to be known as Section 2½" (Acts Illinois 1901, pp. 221-222, Chicago Legal News, Ed.) The section thus added is as follows:

> "When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, Bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious or educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

It is the effect given by the Supreme Court of Illinois to this amendment that violates the rights claimed by the plaintiff in error under the Constitution of the United States. In our opinion, the result declared by the Supreme Court is not found in the language of the amendment, but on the contrary does violence to such language and to settled principles of statutory interpretation. We recognize fully the rule so often announced by the court that the decision of the highest court of a state, construing and applying a statute of the state, will be fol-

lowed in this court unless the rights of a party under the constitution of the United States are thereby violated. It is with no purpose of questioning this rule, but because the statute as interpreted becomes unconstitutional, that we briefly examine the purpose and terms of this amendment. By such process of elimination, we hope to clearly present the one question involved in this record.

As we have seen, the amendment of May 10, 1901, does not deal primarily with persons or corporations as owners or successors to property; it deals with the property itself and declares as to all property in the State of Illniois to which succession can be had through the death of its owner that

> "when the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, Bible, missionary, tract, scientific, benevolent or charitable purpose * * * the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

It is conceded that the property in question passed for educational purposes only and that the corporation chosen by the testatrix to hold and administer the property does not have the right to make dividends or distribute profits or assets among its members. The facts, therefore, bring the case squarely within the exception made by the statute. It is contended, however, and was so held by the court below, that because the devisee is a foreign corporation that the statute has no application. The Legislature did not prescribe that the property

or income therefrom passing to or for the use of any hospital, religious, Bible, missionary or charitable purpose was to be exempt only when such charitable purpose was to be carried out and the money used within its borders—on the contrary, it declared that property or income passing for the use of *any* educational, Bible, missionary or charitable purpose should be exempt. The law makers doubtless had in mind those noble organizations like the American Bible Society, the Boards of Foreign Missions, and others which are engaged in carrying the gospel and civilization to heathen lands, and desired that property in this state, devised to such uses and purposes, should be free of the succession tax; it was intended to encourage such dispositions of property. While the church and state are to be kept separate under our form of government, yet we recognize everywhere by our legislation and judicial decisions that ours is a Christian state and nation. This is illustrated by our recognition of Sunday, exemption of property devoted to church, educational and benevolent purposes, our method of administering oaths and in many other ways. The court has sought to narrow and limit the well-known and praiseworthy purposes of the Act. Under the construction adopted, any succession of property to the use of any of the great Bible or missionary societies must be subject to the inheritance tax, unless a person residing in Illinois, or a corporation organized under its laws, is designated to take, hold and administer such educational, Bible, missionary or charitable trust. To make such a limitation requires the addition of words not found in the act

itself. Such construction, or rather addition, does violence to the words actually used—these words exempt *any* property passing to or for the use of any educational, Bible, missionary or scientific purpose; again, these words must be given their ordinary meanings, and the lawmakers must be presumed to have had in mind well-known historical facts and conditions; they must, therefore, have known that while there may be some need for the activities of Bible and missionary agencies in the great state of Illinois, there is greater need for them in less fortunate localities. If they had designed to exempt property only when dedicated to the use of these agencies in this state and for the benefit only of people of this state, they would have chosen apt words to express that intention, and would not have used general words inclusive of all educational, Bible and missionary uses.

There is yet another rule of statutory construction which is violated by the action of the court below, viz: where general words are followed by words of limitation or exception, such words form the only limitation or exception to such general words. Applying this rule, we find the general words above quoted and remarked upon, followed by the words,

> "but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members."

This has the effect of a proviso, and constitutes the only exception to the general language, permissible under the act, and compels the conclusion that the provision of exemption should have been held

to apply to all corporations taking property for the uses named, not having the right to make dividends or distribute profits or assets among its members.

The question of tax or freedom from tax under this decision is not to be determined by the use to which the property is devoted, and to be applied equally to all property upon succession devoted to the same use, but is to be measured by the question whether the taker of the title as trustee for administration is a citizen or person of Illinois or of some other state, and whether the charity or use is one subject to the visitation and control of the state. It makes no difference that the Legislature of Illinois has not in express words made this discrimination against persons of other states as takers of titles for the purposes of the act of May 10, 1901; the Supreme Court has so interpreted its purpose, and when a constitutional right forbidden to the state is asserted by its authority it matters not by what agency of the state the act is done, whether the legislative, executive or judicial. It is not supposed that this accepted principle of constitutional decision will be challenged by counsel for the State of Illinois. Some of the decisions supporting it are cited in the brief.

Of the amendment of May 10, 1901, above quoted, the Supreme Court of Illinois said (*In re* Estate of Fanny Speed, 216 Ill., 23, 25-26).

> "There is nothing in this amendatory act to indicate that it was the legislative intent that its provisions should apply to corporations created under the laws of a sister state. It is a universally accepted rule of construction that an act of the General Assembly of

> a state granting powers, privileges of immunities to corporations must be held to apply only to corporations created under the authority of that state over which such state has the power of visitation and control, unless the intent that the act shall apply to other than domestic corporations is plainly expressed in the terms of the act. (DosPassos on Inheritance Tax Law (2nd Ed.), Sec. 36; *People* v. *Western Seaman's Friend Society,* 87 Ill., 246; Baille's Estate, 38 N. E. Rep., 1007; *Humphrey* v. *State,* 70 *id.,* 957.)''

The act in question is not and does not purport to be an act granting powers, privileges or immunities to corporations. It is an act passed, as its title and its text declare, for the express purpose of exempting property, devoted by its transfer to certain purposes, from the succession tax. The interpretation put upon it by the court limiting the exemption of the law both as to the taker and the charitable use to the State of Illinois and prescribing a succession tax if the devisee or the charity are of another state, makes the issue a clearly defined one.

Much space is given in the opinion of the court below to a discussion and declaration of what an inheritance tax is. There has been no controversy as to the nature of an inheritance tax at any stage of this litigation. It always has been and is now conceded that ''inheritance or succession taxes are not laid on the property inherited or taken by devise or bequest, but on the right to inherit or to take such property. The right to take property in pursuance of the statute of descent or of the statute pertaining to wills is property, but only for the reason that the law-making body of the state has seen fit

to create the right so as to take by inheritance or by devise or bequest. No person or corporation can inherit property or take by devise or bequest except when authorized so to do by an act of the Legislature. Such may at any time be abrogated prospectively at the will of the Legislature; or, in the exercise of the same power in quality though lesser in degree, the law-making department of the state may modify, regulate or impose conditions on the right to succeed by inheritance or devise to property which was owned by a person who has died."

In our brief in the court below we cited and quoted at length from *Magoun* v. *Ill. Trust & Sav. Bank*, 170 U. S., 283, 288, and *United States* v. *Perkins*, 163 U. S., 625, 628, to the same effect. This is unimportant except for the purpose of eliminating an uncontroverted proposition.

While conceding to the fullest extent the principle stated, we wish to be understood as denying that it is competent under the Constituion of the United States for a state legislating upon the subject to discriminate as against persons of other states whether natural or artificial. In other words, our proposition is that it is not competent for the State of Illinois, whether by legislative act or Supreme Court decision, to require the citizen of Kentucky to pay six per cent. on the sale, gift or devise of land owned by such citizen in Illinois, while the citizen of Illinois who sells, gives or devises property of the same character and value is permitted to do so without cost; or, conversely, the state cannot declare that property conveyed, given or devised to a trustee or other person of Kentucky shall pay six

per cent. succession tax, while if the trustee is of Illinois there shall be no such tax; if this can be done, it is competent for the legislature in the exercise of its admittedly plenary power over the subject to enact that a person owning property in Illinois and desiring to part with the title thereto by conveyance, gift or devise shall be permitted to do so in favor of citizens of Illinois or corporations organized therein and doing business wholly within the state, without cost or expense on account of succession of title; while if and when the conveyance, gift or devise is to or in favor of citizens of any other state or corporations organized under the laws of any other state or doing business in such other state, then there should be paid a succession tax equal to the full cash value of the property so conveyed, given away or devised.

Manifestly, if the power exists to the extent of imposing a tax of six per centum upon the value of the property as a discrimination between persons of different states, it exists to the extent of making the tax the full value of the property or forbidding such conveyance, gift or devise altogether. If this principle is sustained, we may reasonably expect to see in the inheritance tax laws of the near future provisions making one tax upon kin of different degree residing in the state of administration or probate and a much higher tax as against the succession by kin of like degree who reside in other states.

It may be said that the court in the present case simply applied the principle of discrimination as against a corporation of another state. Neither the act nor the decision is so limited. The act exempts

from the succession tax when the beneficial interest of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, etc. This shows that the exemption is not limited to corporate takers or uses. The decision treats the act as a grant of privileges and immunities to corporations, thus ignoring the test of use found in the inquiry, "To what purpose is the beneficial interest in the property devoted?" and the consideration that there is no necessity for corporate agency in this connection; the result is the declaration noted above with reference to the power of state visitation and control as affording the test of taxability or non-taxability upon the right of succession.

The court was probably led into this error through failure to distinguish the difference between a general tax and a tax upon the right of succession through conveyance in contemplation of death, devise or inheritance.

This difference is believed to be fundamental and to have an important bearing upon the questions involved in this case. It is thought also that a brief statement of such difference will tend to further eliminate the uncontroverted questions discussed in the opinion of the court below and clearly define the one issue in the case. What are the rules of construction with reference to claimed exemptions from

(p. 27.)

special taxes as distinguished from such claims to exemption from a general tax? They are:

(a) All persons claiming exemptions from a general property tax must clearly show themselves entitled to such exemption; there are no presumptions in favor of such exemption.

(b) No person or property is liable to a special tax or impost unless clearly within the words of the statute imposing such tax or impost; words of exception are to be liberally and beneficially construed, on the principle that

> "the sovereign is bound to express its intention to tax in clear and unambiguous language, and that liberal construction be given to words of exception confining the operation of duty." (*Eidman* v. *Martinez*, 184 U. S., 578, 583.)

It remains to determine if this distinction finds support in reason and authority.

Every citizen and owner of property lives under the protection of the laws enacted and administered through those agencies provided by the terms of the constitution and laws made thereunder; he knows and must be held to know that these agencies, from the great organism designated the State, down to the lowest agent thereof exercising public authority, must be sustained at the collective expense, and hence the necessity of taxation. These funds are required to be raised by general laws and to fall upon all property and classes uniformly. The battle of freedom and civilization has been largely fought along this line. The struggle has been against special taxes and privileges, and for uniform impositions and burdens. It was for this end

that everywhere the people in their struggle with despotism or entrenched power have sought to establish the right of the commons as their representatives to hold the purse and originate all revenue measures. In so far as they have accomplished these ends under any form of government may they be said to have progressed towards freedom, and in so far as they have fallen short are they yet in thraldom.

It follows when any person living in society and owning property sets up the claim that he personally, or his property, is exempt from these general and common burdens, that he should be required to establish his contention in the clearest and most satisfactory manner—he should be required to point to some language used by the law making power so clear and explicit as to be incapable of any other interpretation; for it offends against natural justice that one should enjoy the blessings of organized society and be exempt from its necessary burdens. Such a person is a mere parasite upon the body politic.

On the other hand, when organized society in its capacity of state sets up the claim as against an individual that he or his property or his right to succeed to property is subject to some tax or charge not applicable to other citizens, or to other property, such individual has the right, and it is his duty to demand by what right he or his property, or his enjoyment thereof, is thus singled out and made subject to burdens not falling upon other units of the State. This right and duty has been a part of our inheritance at least since Hampden's time. The

State must be able, under such circumstances, to point to language so clear and explicit as to warrant no other interrpetation requiring the payment of the special tax, and must further show that it has the constitutional power to use and enact the language. All the presumptions are against it. History, which is only recorded experience, and reason alike justify the distinction here made.

It has, of course, found expression in judicial opinion. Thus, in *Eidman* v. *Martinez,* 184 U. S., 578, 583, this court, speaking by Mr. Justice Brown, said:

> "It is an old and familiar rule of the English courts, applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of *exception* confining the operation of duty. *Warrington* v. *Furbor,* 8 East, 242, 247; *Williams* v. *Sangar,* 10 East, 66, 69; *Denn* v. *Diamond,* 4 B. & C., 243, 245; *Tomkins* v. *Ashby,* 6 B. & C., 541; *Doe* v. *Snaith,* 8 Bing., 146, 152; *Wroughton* v. *Turtle,* 11 M. & W., 561, 567; *Gurr* v. *Scudds,* 11 Exchq., 190, though the rule regarding *exemptions* from general laws imposing taxes may be different. Cooley on Taxation, 146; *In Matter of Enston,* 113 N. Y., 174, 177.
>
> We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the importer, and that the intent of congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language. *Hartranft* v. *Wiegmann* 121 U. S., 609; *American Net & Twine Co.* v. *Worthington,* 141 U. S., 468; *United States* v. *Wigglesworth,* 2 Story, 369; *Powers* v. *Barney,* 5 Blatchford, 202."

The court, in discussing the English cases, shows that under the act imposing a tax on every legacy "given by any will or testamentary instrument to any person who shall die after the passage of this act," it is now settled by the decisions of the House of Lords in *The Attorney General* v. *Jackson,* 8 Bligh. (N. S.), 15, and *Thompson* v. *Advocate General,* 12 Cl. & Fin., 1, that assets of a testator domiciled abroad, though administered in England, are not subject to such tax.

An attempt was then made to raise a distinction between a legacy tax and a succession duty, which came into operation by the act of May 19, 1853. Mr. Justice Brown says of this (pp. 585, 586):

> "In *Wallace* v. *Attorney General,* L. R., 1 Ch. App., 1, it was held that a succession duty was not payable on legacies given by the will of a person domiciled in a foreign country. The law was treated as settled by *Thompson* v. *Advocate General,* 12 Cl. & F., 1, and the question discussed on principle in a vigorous opinion. The converse of this case is that of *Attorney General* v. *Napier,* 6 Exch., 217, in which a British born subject died in India, though he had never acquired a domicil there, and it was held that the whole of his property, though chiefly situate abroad, was liable to a legacy duty. This case is similar to that of *Ewin,* 1 Cr. & Jr., 151, above cited, though decided twenty years later. See also *Attorney General* v. *Campbell,* L. R., 5 H. L., Eng. & Irish Apps., 524; *Lyall* v. *Lyall,* L. R., 15 Eq., 1.
>
> From this analysis of the English cases it clearly appears that, under a general act imposing a duty upon legacies, the law of the domicil of the testator controls, and if he be domiciled abroad, whether an alien or a British subject, his legacies are exempt, whether the

> property be in England at the time of his death, or be subsequently remitted there by his executors for local administration and distribution."

The court then proceeds to examine the various decisions of the state courts upon this subject and shows that the tendency has been to impose the succession tax upon all property passing under the laws of the state, and says (p. 589):

> "The tax in question in this case not being upon the property itself, but upon the succession, *United States* v. *Perkins*, 163 U. S., 625; *Magoun* v. *Illinois Trust & Savings Co.*, 170 U. S., 283; *Knowlton* v. *Moore*, 178 U. S., 41, laws imposing general taxes upon real and personal property are not controlling when applied to taxes upon the succession, when such succession takes place and is governed by the laws of a foreign country. The actual *situs* of the property in such cases cuts but a small figure, while in the case of general taxes upon such property it is now considered determinative of the whole question."

Confining ourselves, however, to judicial declarations of the principles of construction for which we contend, we ask the court's attention to the following from the decision *In re Enston*, 113 N. Y., 174, 177:

> "The tax imposed by this act is not a common burden upon all the property, or upon the People within the State. It is not a general, but a special tax reaching only to special cases, and affecting only a special class of persons. The executors in this case do not, therefore, in any proper sense, claim exemption from a general tax or a common burden. Their claim is that there is no law which imposes such a tax upon the property in their hands as executors. If they were seeking to escape from general taxa-

tion, or to be exempted from a common burden imposed upon the People of the State generally, then the authorities cited by the learned counsel for the People, to the effect that an exemption thus claimed must be clearly made out, would be applicable. But the executors come into court claiming that the special taxation provided for in the law of 1885 is not applicable to them, or the property which they represent. In such a case they have the right both in reason and in justice, to claim that they shall be clearly brought within the terms of the law before they shall be subjected to its burdens. It is a well established rule that a citizen can not be subjected to special burdens without the clear warrant of the law. The following authorities furnish the true rule applicable to such a case: Cooley on Taxation, 2nd Ed., 275; *U. S.* v. *Wigglesworth*, 2 Story, 373; *Powers* v. *Barney*, 5 Blatchf., 203; *U. S.* v. *Watts*, 1 Bond., 583; *Doe* v. *Snaith*, 8 Bing., 152; *Green* v. *Howay*, 101 Mass., 248."

And the following from *In re Swift's Estate*, 137 N. Y., 77, 87:

> "As a law imposing a special tax, it is to be strictly construed against the state, and a case must be clearly made out for its application."

This was in reference to the collateral inheritance law of 1887.

In *Gurr* v. *Scudds*, 11 Exch., 190, a stamp act imposing stamps on certain sales of goods had certain exemptions embodied in it. Pollock., B., said:

> "If there is any doubt as to the meaning of the stamp act it ought to be construed in favor of the subject, because a tax can not be imposed without clear and express words for that purpose."

In *U. S.* v. *Wigglesworth,* 2 Story, 369, various acts of congress which imposed imposts on indigo were passed in such terms that it seemed a doubtful question whether the indigo imported by the defendant did not fall within an express exemption. The act of 1832 made indigo subject to tax, but an act of 1833 made it free from duty after 1842. An act of 1841 then laid a tax of 30 per cent. on all articles then taxable except indigo, etc., which shall pay the rate due under existing laws. It was held that the defendant was not liable, on the ground that a special tax on a certain article is most strongly construed against the government.

In *U. S.* v. *Watts,* 1 Bond, 580, a tax was imposed on goods, etc., of a decedent in the hands of the executor, left by will to legatees. The government attempted to tax money arising out of the sale of real property, on the ground that it was converted into personal property. It was held not taxable under the rule of strict construction against the government.

In *Fox* v. *Commonwealth,* 16 Grattan, 1, the question was whether a statute imposing a collateral inheritance tax was repealed by implication by a later statute. Among the considerations which moved the court to hold that it was repealed was the fact that an act of this kind was not to be enforced in favor of the government unless it was clearly shown to have been imposed on the particular person claiming exemption.

In *Mager* v. *Grima,* 8 How., 490, 493, Mr. Chief Justice Taney, speaking with reference to a Louisiana statute imposing a tax of ten per cent, upon an inheritance or succession passing to an alien, said:

"Now the law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and term upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the State. In many of the States of this Union at this day real property devised to an alien is liable to escheat. And if a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any condition which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take is given to the alien, subject to a deduction of ten per cent. for the use of the State.

In some of the States laws have been passed at different times imposing a tax similar to the one now in question upon its own citizens as well as foreigners, and the constitutionality of these laws has never been questioned. And if a State may impose it upon its own citizens, it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens.

We can see no objection to such a tax, whether imposed on citizens and aliens alike, or upon the latter exclusively."

And it was likewise held in *United States* v. *Fox*, 94 U. S., 315, the court, speaking by Mr. Justice Field:

> "The several states of the Union possess the power to regulate the tenure of real property within their respective limits, the modes of its acquisition and transfer, the rules of its descent and the extent to which a testamentary disposition of it may be exercised by its owners."

These broad declarations as to the power of the several states to regulate and limit the succession to property within their respective jurisdictions, were intended to apply to the facts of the particular cases decided and to state general propositions of law.

They are not as we submit authority for the proposition that in the exercise of this conceded power of limiting or forbidding succession upon the death of the owner, one rule can be adopted in favor of persons residing in other states and a more favorable one for persons residing in the State where the property is situated.

The Constitution of the United States has many clauses intended to prevent discrimination by any State in favor of its own citizens and against the citizens of other States. It was not intended by the framers of that instrument that the several States should have the power to enter upon any such war of discrimination with reference to any of the great questions involving the life, liberty or property of the individual citizen, or again with reference to the raising of income to maintain the independent state government. The conditions which made manifest the weakness of the confederation and threatened ruin to the people of the several States, made necessary the creation of a nation. In any event, the

framers of the constitution attempted to lay the foundation of a national life, and through the decisions of this court and the logic of events we now see that their attempt to reconcile conflicting States and a natural jealousy of centralized power has resulted as they hoped. This general principle of equality of right as between citizens of the several States in all matters of commerce and taxation has been repeatedly recognized in this court, sometimes by language pointing to the act of a State as an infraction of some specified clause of the constitution; at other times declaring the power exercised by the State to be inconsistent with the character of the national government, and the ends to which it was founded. It is our contention that the present law of Illinois, as construed by the Supreme Court of that State, is within both these objections, in so far as it applies to citizens or persons of other states.

In the Passenger Cases, 7 How., 283, the conclusion of the majority of the court was based upon the theory that the tax levied by the States of New York and Massachusetts upon the masters of vessels engaged in foreign commerce, requiring the payment of a certain sum on account of every passenger brought from a foreign country was inconsistent with the national power of our government. While the court recognized to the fullest extent the sovereign power of the States over the subject of taxation, it was clearly declared that this power was limited to the extent that it must be consistent with the purposes to which the Union was established and not interfere with any of the powers delegated to

the United States. For example, Mr. Justice McLean said, p. 407:

> "If this power to tax passengers from a foreign country belongs to a State, a tax, on the same principle, may be imposed on all persons coming into or passing through it from any other State of the Union. And the New York statute does in fact lay a tax on passengers on board of any coasting vessel which arrives at the port of New York with an exception of passengers in vessels from New Jersey, Connecticut and Rhode Island, who are required to pay for one trip in each month. All other passengers pay the tax every trip.
>
> If this may be done in New York, every other State may do the same, on all the lines of our internal navigation. Passengers on a steamboat which plies on the Ohio, the Mississippi, or on any of our other rivers, or on the lakes, may be required to pay a tax, imposed at the discretion of each state within which the boat shall touch. And the same principle will sustain a right in every State to tax all persons who shall pass through its territory on railroad cars, canal boats, stages, or in any other manner. This would enable a State to establish and enforce a non-intercourse with every other State."

Mr. Justice Catron's opinion expresses a similar thought at page 449, as does that of Mr. Justice Grier at page 462. The dissenting opinion of Mr. Chief Justice Taney was more emphatic than any of the opinions of the majority, that the end and purpose of the Union was found in the equality of the citizens of the several states throughout the entire United States. He said, page 492:

> "In speaking of the taxing power in this case, I must, however, be understood as speaking of

it as it is presented in the record; that is, to say, as the case of passengers from a foreign port. The provisions contained in that law relating to American citizens who are passengers from the ports of other States is a different question, and involves very different considerations. It is not now before us; yet, in order to avoid misunderstanding, it is proper to say that, in my opinion, it cannot be maintained. Living, as we do, under a common government, charged with the great concerns of the whole Union, every citizen of the United States, from the most remote States or Territories, is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every State and territory of the Union. And the various provisions in the Constitution of the United States—such, for example, as a right to sue in a federal court sitting in another State, the right to pursue and reclaim one who has escaped from service, the equal privileges and immunities secured to citizens of other States, and the provision that vessels bound to or from one State to another shall not be obliged to enter and clear, or pay duties—all prove that it intended to secure the freest intercourse between the citizens of the different States. For all the great purposes for which the federal government was formed, we are one people, with one common country. We are all citizens of the United State; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States. And a tax imposed by a State for entering its territories or harbors is inconsistent with the rights which belong to the citizens of other States as members of the Union, and with the objects which that Union was intended to attain. Such a power in the States could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

In *Crandall* v. *Nevada*, 6 Wall., 35, 48, this view receives the approval of this court. The language of the Chief Justice in the Passenger Cases quoted above is repeated and adopted by the court in connection with the significant declaration:

> "In all these cases the opponents of the taxes levied by the States were able to place their opposition on no express provision of the constitution, except in that of *Brown* v. *Maryland*. But in all the other cases, and in that case also, the court distinctly placed the invalidity of the State taxes on the ground that they interfered with an authority or the federal government, which was itself only to be sustained as necessary and proper to the exercise of some other power expressly granted."

The constitutionality of the statute of Alabama, imposing a tax upon all sales made therein, was sustained in *Woodruff* v. *Parham*, 8 Wall., 123, solely because the tax was uniform and fell equally upon the citizens of that state and of other states doing business therein—that the law would have been held void had there been any attempt to discriminate as between the citizens of the different states, is made manifest by the following language of Mr. Justice Miller, page 140:

> "The case before us is a simple tax on sales of merchandise, imposed alike on all sales made in Mobile, whether the sales be made by a citizen of Alabama or of another State, and whether the goods sold are the produce of that State or some other. There is no attempt to discriminate injuriously against the products of other States or the rights of their citizens, and the case is not, therefore, an attempt to fetter commerce among the States, or to deprive the citizens of other States of any privilege or im-

munity possessed by citizens of Alabama. But a law having such operation would, in our opinion, be an infringement of the provisions of the constitution which relate to those subjects, and therefore void."

Mr. Justice Nelson, in his dissenting opinion, goes into the subject historically, and shows that the idea of equality of right with reference to the subject of taxation as between the citizens of the several States was a fundamental one with the framers of the constitution. He quotes Mr. Justice Story as follows, page 147:

"So it seems that a struggle for State powers was constantly maintained, with zeal and pertinacity, throughout the whole discussion. If there is wisdom and sound policy in restraining the United States (referring to the prohibition upon it in respect to articles exported from the State) from exercising the power of taxation unequally in the States, there is, he observes, at least equal wisdom and policy in restraining the States themselves from the exercise of the same power injuriously to the interests of each other. A petty warfare of regulation is thus prevented which would rouse resentments and create dissension to the ruin of the amity of the States. The power to enforce their inspection laws is still retained, subject to the revision and control of Congress. So that sufficient provision is made for the convenient arrangement of the domestic and internal trade whenever it is not injurious to the general interests."

In the case of *Hinson* v. *Lott*, 8 Wall., 148, decided at the same time with *Woodruff* v. *Parham*, Mr. Justice Miller speaking for the court, said, page 152:

> "The tax in the case before us, if it were of the character we have suggested, discriminating adversely to the products of all the other States in favor of those of Alabama, and involving a principle which might lead to actual commercial non-intercourse, would, in our opinion, belong to that class of legislation and be forbidden by the clause of the Constitution just mentioned."

The decisions in *Ward* v. *Maryland*, 12 Wall., 418, 430, 431; *Welton* v. *State of Missouri*, 91 U. S., 275; *Tiernan* v. *Rinker*, 102 U. S., 123; *Webber* v. *Virginia*, 103 U. S., 344; *Walling* v. *Michigan*, 116 U. S., 446, and other cases of similar import further illustrate the consistent and emphatic denial by this court of all right on the part of the States to discriminate against citizens of or property from other States in the exercise of their sovereign power of taxation or of the equally high police power as affecting commerce between the States.

The origin of the United States, and the consistent policy as shown by its legislation and judicial decisions, all forbid the idea of discrimination by one State as against the citizens, persons or property interests of the others.

It remains to inquire whether there is any express language in the constitution, unconnected with the commerce clause, prohibiting such discrimination, and to what extent.

By Act 4, Sec. 2, and the fourteenth amendment to the constitution, it is made clear that the citizens of each State are entitled to all privileges and immunities of citizens of the several States, and that no State can make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States. These provisions require no extended discussion as applied to this case. Under them the citizen of Kentucky has the same right to own, use and dispose of property located in Illinois as has any citizen of Illinois. It is clear that it would not be competent for Illinois to enact that upon the sale of any property within her borders owned by a citizen of any State other than Illinois, or upon the devolution of the title to any such property so owned, by the death of such owner, and succession thereto through intestacy or devise, a tax of six or some other per cent should be collected, while upon the sale or devolution of title to property owned by citizens no tax or charge should be made. Such a provision would as clearly violate the clauses above named, guaranteeing equality of privilege and immunity as did the charge per head of passengers landed from any foreign country, or transported from the state, violate the commerce clause of the constitution. In fact, it may well be doubted if there would be any such dissent in this court as has marked the construction of the law upon the relative powers of the national and State governments under the commerce clause of the constitution. The same arguments as have been used in the discussion of the commerce clause growing out of the conditions existing prior to the formation of the constitution, and leading to the necessity of a national life of so broad a character as to do away with State jealousies and discriminations, apply equally to the subject under discussion. It is no more important that the citizen of one State

should have free access and egress to and from the several States, or be equally taxed, than that he should have an equal right to sell or devise property owned by him.

It remains to consider the question from that of the recipient of the property, in this case, the Board of Education, a corporation of Kentucky. It is useless to cite authorities to sustain the proposition that corporations are not *citizens* within these provisions of the constitution. No well-informed lawyer would contend to the contrary. It is settled, however, that such corporations are *persons* within the meaning of the fourteenth amendment.

To the application of the Fourteenth Amendment to the case at bar the Supreme Court of Illinois interposes two objections:

First. That the Board of Education is not a person within the jurisdiction of Illinois, as required by that amendment.

Second. That any State is authorized to exclude from its borders any corporation organized under the laws of another state, or may impose such conditions for the admission of foreign corporations within the limits of its jurisdiction as its law-making body may consider requisite for the protection of its interests and policies.

If the Board of Education is within the jurisdiction of Illinois, we understand that it follows that it is a person, and entitled to the equal protection of the laws of the State; in other words, it is not competent for Illinois to tax the property of corporations organized under its laws at one rate, and

the property of corporations organized under the laws of a sister State, and devoted to the same purpose, at another rate; to provide that the taking of property owned by a domestic corporation shall be larceny, while a like taking of the property of a foreign corporation shall be regarded as a public benefit, and the taker rewarded by bounty.

The court below assigned the following reasons for holding that the Board of Education was not within the jurisdiction of Illinois (216 Ill., page 30):

> "Foreign corporations are not 'within the jurisdiction' of a State other than that which created them, within the meaning of those words as employed in Section 1 of the fourteenth amendment, until they have fulfilled the conditions authorizing their admission into such State. (*Blake* v. *McClung*, 172 U. S., 239.) The State of Illinois has adopted certain requirements to be complied with by foreign corporations *organized for pecuniary profit* who desire to transact business within the limits of this State, but we are not aware that authority has been granted by any enactment of the State authorizing a corporation organized, as is the appellant Board, by a foreign State, to accumulate funds or income to be used for educational and religious purposes in the State in which such foreign corporation was created, to exercise its chartered powers in this State. The stipulated facts show the appellant Board has never engaged in this State in the educational or religious work it was chartered to promote and advance; that it does not maintain and never had an office in this State, and that, in fact, it has no power to devote funds which it may receive to educational and religious purposes beyond the bounds of the limits of the State of Kentucky. It is not a 'citizen' of the

> United States and not a person 'within the jurisdiction of the State' of Illinois, and hence cannot invoke the benefit and protection of the provisions of the Federal Constitution here under consideration."

These requirements prescribing conditions upon which *corporations organized for pecuniary profit* can *transact business* in Illinois have no application to corporations not organized for pecuniary profit, and which succeed to title to property in this state. There is no law of Illinois prescribing any conditions of limitations upon such ownership or the transaction of business by corporations not organized for pecuniary profit. Such corporations can do any act in Illinois within the terms of their charter.

Thus, in *Santa Clara Female Academy* v. *Sullivan*, 116 Ill., 375, the court said (we quote from the syllabus):

> "The general laws of this State, for many years prior to 1874, and since, have expressly empowered corporations for educational purposes to take and hold real estate by grant and devise, without limit as to quantity and value.
>
> There is in the law of this State no discrimination against foreign corporations, but they are placed on the same footing with our own domestic corporations, and are given, by implication, equal powers with domestic ones of like character. Our law places them under the same restrictions as ours are, but this has no reference to the manner of their coming into existence or the mode of their organization.
>
> So a corporation organized under the laws of another State purely for educational purposes, having the capacity, under its charter or the laws of its State, to acquire, hold and convey

real and personal property, may take and hold real estate in this State, by devise, to the extent of its capacity in the State of its creation.

The cases of *Carroll* v. *East St. Louis*, 67 Ill., 568; *Starkweather* v. *American Bible Society*, 72 *id.*, 50, and *United States Trust Co.* v. *Lee*, 73 *id.*, 142, in respect to what was actually decided by them, do not conflict with the ruling in this case. The remarks in the first of those cases, which may be inconsistent with the rule here announced, not being necessary to the decision therein made, are to be regarded as *obiter dicta.*"

To the same effect is *Christian Union* v. *Yount*, 101 U. S., 352, a case arising in Illinois and involving the rights of a benevolent or charitable foreign corporation in that State. As there is no law pointing out any act necessary for a charitable corporation to do to bring itself within the jurisdiction of the State, and as it has a legal right to take property by devise equal to that of a domestic corporation, it is difficult to see what the court below can mean in asserting that such a corporation is not within the jurisdiction of the State until it has "fulfilled the conditions authorizing their (its) admission into such State," or what pertinency can be predicated of the statement, "The State of Illinois has adopted certain requirements to be complied with by foreign corporations organized for pecuniary profit who desire to transact business within the limits of this State," etc.

It is well settled that the Board of Education is within the jurisdiction of the State of Illinois. It has come to this State to take title to property here situated, and probated the will of Mrs. Speed as evi-

dence of such title. The State has recognized its presence in the State by proceedings against it to impose this large tax upon its succession to such property. It has appeared to resist such imposition in all the courts of the State, commencing with the State appraiser, then the County Court, and finally the Supreme Court. Plainly thereby it came within the jurisdiction of the State. In *Christian Union* v. *Yount*, 101 U. S., 352, 356, this court, by Mr. Justice Harlan, said:

> "Although, as a general proposition, a corporation must dwell in the State under whose laws it was created, its existence as an artificial person may be acknowledged and recognized in other States. Its residence in one State creates no insuperable objection to its power of contracting in another." *Runyan* v. *The Lessee of Coster* 14 Pet., 122. In *Cowell* v. *Springs Company* (100 U. S., 55) we said: "If the policy of State or Territory does not permit the business of the foreign corporation in its limits or allow the corporation to acquire or hold real property it must be expressed in some affirmative way; it cannot be inferred from the fact that its legislature has made no provision for the formation of similar corporations, or allow corporations to be formed only by general law. Telegraph companies did business in several States before their legislatures had created or authorized the creation of similar corporations; and numerous corporations existing by special charter in one State are now engaged, without question, in business in States where the creation of corporations by special enactment is forbidden." In harmony with the general law of comity obtaining among the States composing the Union, the presumption should be indulged that a corporation of one State, not forbidden by the law of its being, may exercise within any

other State the general powers conferred by its own charter, unless it is prohibited from so doing, either in the direct enactments of the latter State or by its public policy to be deduced from the general course of legislation, or from the settled adjudications of its highest court."

In *Santa Clara Female Academy* v. *Sullivan*, 116 Ill., 375, the court held:

"It is provided in Section 26 of Chapter 32 (Rev. Stat. 1874, p. 290), that 'foreign corporations doing business in this State,' shall have no other or greater powers than corporations of like character organized under the general laws of the State, thereby impliedly granting to such foreign corporations the same privileges enjoyed by domestic corporations. The restriction to 'foreign corporations doing business in this State,' is not to be understood as necessarily excluding such foreign corporations as may carry on the special business for which they were organized, exclusively in another State, but receiving lands in this State by devise, and the assertion in the State of ownership over them, will be a sufficient 'doing of business in this State' within the purview of the statute."

In *Pennsylvania Co. for Ins., etc.*, v. *Bauerle*, 143 Ill., 459, 471, the court said of the devise to a foreign corporation:

"So here, receiving the land adjoining Chicago by devise, with power to sell and dispose of the same, and with power to lease it and to collect the rents and profits therefrom, and the assertion in this State of the ownership of said land, and assuming to sell and convey it, and bringing suits in the courts of this State in respect to said land and such alleged ownership, and for the enforcement of contracts in regard to the same, must be held to be doing business in this State, within the purview of said section."

The imposition of the tax upon the succession embraces as a necessary concept the idea of the presence within the jurisdiction of the State of the person taking the succession. The tax is not one on the property, but on the succession. The succession must necessarily bring the owner within the jurisdiction of the State for its purpose and uses, and hence as an object of the taxing power; and hence within the requirement of the equal protection of the laws.

In the Passenger Cases, 7 How., 283, 422, Mr. Justice WAYNE said:

> "The right in a nation or State occurs—not in all cases, for there are international exceptions—upon all persons and things when they come or are brought within the territory of a State. Not, however, because the person or thing is within the territory, but because they are under the sovereignty or political jurisdiction of the State. If not within the latter, the right to tax does not arise until that event occurs. States may have territorial jurisdiction for most of the purposes of sovereignty, without political jurisdiction for some of them."

This principle is thus stated in Professor McGehee's Due Process of Law, p. 218:

> "The principles of public law limit the power of a State in imposing taxes, whatever be the form which the tax may assume, to persons, property, and business within the jurisdiction of the State; and a disregard of this rule is a denial of due process of law to the owners of property upon which a tax is levied and which is not within the jurisdiction. (*Dewey* v. *Des-Moines*, 173 U. S., 193; *Louisville, etc. Ferry Co.* v. *Kentucky*, 188 U. S., 385; *Delaware, etc. R. Co.* v. *Pennsylvania*, 198 U. S., 341; *Union Re-*

frigerator Transit Co. v *Kentucky*, 199 U. S., 194.)"

In *Dewey* v. *DesMoines*, 173 U. S., 193, 204, the court said:

> "The power to tax is, however, limited to persons, property and business within the State and it cannot reach the person of a non-resident. (State Tax on Foreign-held Bonds, 15 Wall., 300, 319.) In Cooley on Taxation, 1st Ed., p. 121, it is said that 'a State can no more subject to its power a single person or a single article of property whose residence or legal situs is in another State, than it can subject all the citizens or all the property of such other State to its power.' These are elementary propositions."

In *Louisville & Jeffersonville Ferry Co.* v. *Kentucky*, 188 U. S., 385, 396, the court said:

> "While the mode, form and extent of taxation are, speaking generally, limited only by the wisdom of the Legislature, that power is limited by a principle inhering in the very nature of constitutional Government, namely, that the taxation imposed must have relation to a subject within the jurisdiction of the taxing Government. Hence, this court, speaking by Chief Justice MARSHALL, in *McCulloch* v. *Maryland*, 4 Wheat., 316, 429, said that, while all subjects over which the sovereign power of a State extends are objects of taxation, 'Those over which it does not extend, are, upon the soundest principles, exempt from taxation.' That proposition, he said, could almost be pronounced self-evident."

In *Union Transit Company* v. *Kentucky*, 199 U. S., 194, 204, the court said:

> "It is also essential to the validity of a tax that the property shall be within the territorial

> jurisdiction of the taxing power. Not only is the operation of State laws limited to persons and property within the boundaries of the State, but property which is wholly and exclusively within the jurisdiction of another State, receives none of the protection for which the tax is supposed to be the compensation. This rule receives its most familiar illustration in the cases of land which, to be taxable, must be within the limits of the State. Indeed, we know of no case where a legislature has assumed to impose a tax upon land within the jurisdiction of another State, much less where such action has been defended by any court. It is said by this court in the foreign-held Bond case, 15 Wall., 300, 319, that no adjudication should be necessary to establish so obvious a proposition as that property lying beyond the jurisdiction of a State is not a subject upon which her taxing power can be legitimately exercised."

Concededly, the succession tax is not a tax upon property but upon the succession to property. If the right to tax is asserted, the presence within the jurisdiction of the person succeeding or the right is necessarily asserted.

It is submitted that these considerations demonstrate that the Board of Education was a person within the jurisdiction of the State of Illinois and entitled to the equal protection of its laws, and render entirely inapplicable the decisions holding that where the state statute prescribes acts to be done by a foreign corporation as prerequisite to doing business in such State, it is not within the jurisdiction of the State until it complies with such conditions.

It remains to consider whether the equal protection of the laws allows a State to impose one rate

of taxation upon the property or succession to property of persons residing therein and another rate upon persons of other States. It is to be remembered that the word "persons" in this clause embraces citizens and corporations.

In *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S., 283, 292, Mr. Justice McKenna, speaking for the court, said:

> "The power of the States over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws."

It is not contended that the fourteenth amendment requires the States to adopt any rule of equal taxation as applied to its own citizens or persons transacting business therein. Our contention is limited to the claim that the line of classification cannot be based on State lines, *i. e.* the question of State citizenship or State organization as applied to corporations. Uniformity of taxation is a question of State constitution or laws, unless discriminations are made based upon ownership by persons of different States, when it at once becomes a federal question. The purpose to discriminate for such reasons must be evident and the necessary result of the legislation or decision. The fact that in the workings of the law some inequality may arise is not enough; it must appear that there was an intention to discriminate against the citizens or persons of other States, precisely what the Supreme Court of Illinois declares was the purpose of the

law making power in enacting the law of May 10, 1901. We make these limitations to avoid the necessity of discussing questions well settled and not pertinent to the question here involved.

Second, the Supreme Court of Illinois states that because the State of Illinois has the right to prescribe the terms and conditions upon which foreign corporations may transact business within its borders, the tax imposed in the present case is valid. We concede the power of the State to prescribe the terms and conditions upon which a foreign corporation may enter its borders. This court has often so declared and added that it is likewise competent for the State to forbid such corporations from transacting business therein. This, however, throws no light upon the question and by no means justifies the conclusion deduced therefrom by the Supreme Court of Illinois.

The State of Illinois has not attempted to prescribe the conditions under which a corporation organized in another State for charitable or religious purposes may transact business in such State in connection with the purposes of its organization. As we have seen, the decisions in the Supreme Court of the State, as well as in this court, establish the unrestricted right of such corporations to take and hold property in the State. Having the right by the laws of Kentucky to hold real estate, in that State or elsewhere, the right likewise is established by the public policy of Illinois.

The question then is, are these rights subject to the equal protection of the laws, it being conceded

that like corporations in Illinois are not required to pay succession taxes upon property held to such uses?

The fallacy of the court's position lies in the failure to recognize the principle that constitutional rights cannot be denied by the State, or withheld in any way, by contract or otherwise. If the Board of Education is rightly in Illinois, then it is equal before its laws. It could not have been required to waive any of its constitutional rights, even if the State had demanded such waiver, as it has not. It would have been within the rule of *Insurance Co.* v. *Morse*, 20 Wall., 445, and succeeding cases holding that such a right could not be bartered away, and that no provision in a State law is effective to prevent the removal of a cause to the Federal court if the case falls within the terms of the Federal statute providing for removal of causes. It is competent for the State to require the foreign corporation to cease doing business in the State if it does so remove causes. This is the result of the case cited, and *Doyle* v. *Continental Insurance Co.*, 94 U. S., 535; *Barron* v. *Burnside*, 121 U. S., 186; *Cable* v. *United States Life Ins. Co.*, 191 U. S., 288, 306; *Dayton Coal & Iron Co.* v. *Benton*, 183 U. S., 23, 25; *Security Mutual Life Insurance Co.* v. *Prewitt*, 202 U. S., 246. These cases are authority for the true rule applicable to the case at bar, which may be stated as follows:

A State has no right in dealing with a foreign corporation with respect to transacting business within its limits, or in taxing its property owned therein or its succession to any property, to deny to such

corporation the equal protection of its laws or violate any other constitutional right.

The emphasis put upon this limitation of the State's power in the cases cited cannot be ignored. We submit, however, that discussion of the State's power to impose unconstitutional conditions for permission to do business in the State is wholly beside the question. It is admitted that there is a great conflict of authority upon this question, which we have entered upon only because of the language used by the court below. The later decisions of this court clearly imply that no such conditions can be imposed while there are decisions of State courts holding that the power to exclude embraces the power to exclude for unconstitutional as well as for valid reasons.

It is enough for our purpose that neither the lawmaking nor judicial power of the State has attempted to prescribe that a tax of six or any other per cent. shall be paid by a foreign charitable or religious corporation as a condition of succession by inheritance or devise in Illinois, while the domestic corporation goes free. The court has merely used its assertion of the conceded power of the State regarding the admission of foreign corporations to its borders to support an unwarranted conclusion.

We have then a case where the corporation is properly in Illinois, and the question whether being within the jurisdiction of the State the latter can apply to it different rules of taxation than it applies to its own corporations of the same character. It is not a question of admission to the State, but of treatment after taking title through devise and where no conditions are imposed. It is the case described by Mr.

Justice HARLAN in his dissenting opinion in *Philadelphia Fire Association* v. *New York*, 119 U. S., 110, which dissent is upon the theory that the Pennsylvania Company was already within the jurisdiction of the State, and therefore subject to constitutional protection, while the prevailing opinion held its tenure was from year to year, and that it was not within the jurisdiction of the State for these purposes when it failed to comply with the laws prescribing the conditions upon which it could do business within the State. Neither the opinion in this case nor in any of the cases referred to warrant the conclusion that when the corporation is in the State in compliance with law, unequal and discriminating taxes may be levied.

In *Erie Railway Company* v. *State*, 2 Vroom, 531 (s. c., 86 Am. Dec., 226), the court had occasion to consider this precise question. The transit duty of three cents on every passenger and two cents on every ton of merchandise levied by any corporation doing business in New Jersey not being a corporation of that State, was plainly unconstitutional as a regulation of commerce by the State authority. This attempt was defended because it applied only to the business of foreign corporations. Of this contention the court said (86 Am. Dec., 236-237):

> "It is not forgotten that it was pressed by counsel on the argument in defense of this law that, as at present framed, it applies solely to the business of corporations created by the laws of other States. Viewed in a merely practical light, this consideration is not of much weight, for it is evident that almost all of the commerce between the States must always be in the hands of corporations of this description, and that,

consequently, the power to tax to the point of prohibition the business of such companies is substantially the power to interdict the entire commerce. But considering the question in a theoretical point of view, it would seem to be clear that a State cannot tax for the purpose of revenue a foreign corporation in a mode different in principle from that in which she can tax one of her own domestic corporations. It is not denied that the corporate existence of a company is recognized, not by right, but of grace in foreign jurisdictions, nor that each government has the competence to refuse to recognize such existence except on its own conditions. The principle is universally acknowledged. Hence, laws requiring insurance companies and other foreign corporations to file bonds and submit to other exactions as a prerequisite to their admission in an incorporated capacity into the State. Such laws, when rightfully made, are evidently mere police regulations, designed to protect the citizens of the State in which they are enacted from loss or imposition, and on this ground their legality cannot be drawn into question. But a tax law, having revenue for its object, is based upon a principle entirely different. The right to tax for revenue is the right of the government to take so much of the property of the person or company upon whom the tax falls as such government may deem necessary for its public wants. The act of taking the property, therefore, must, of necessity, be an acknowledgment of the legal status of the person or company whose property is taken. To assert that the company whose property is thus taken has no rights but such as the government taking it chooses to confer, is to assert that such company has no title to its property but such as may be conceded to it by the taxing power. It seems to be utterly inconsistent with legal principles, which have always been deemed axiomatic, to hold that a government can recognize the legal

existence of a foreign corporation for the purpose of taxation, and at the same time can deny such legal existence for the purpose of depriving it of those rights which belong to every individual or company known to the law."

This court has repeatedly asserted the same principles. Thus, in *Barbier* v. *Connolly,* 113 U. S., 27, 31, the court said of this amendment:

> "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

In holding the tax on franchises valid and not obnoxious to the Fourteenth Amendment, in *Home Ins. Co.* v. *New York,* 134 U. S., 594, 606, this court put emphasis upon the fact that the tax applied equally to corporations of New York, saying:

"And when such legislation applies to artificial bodies, it is not open to objection if all such bodies are treated alike under similar circumstances and conditions, in respect to the privileges conferred upon them and the liabilities to which they are subjected. Under the statute of New York all corporations, joint stock companies and associations of the same kind are subjected to the same tax. There is the same rule applicable to all under the same conditions in determining the rate of taxation. There is no discrimination in favor of one against another of the same class."

In *Pembina Mining Co.* v. *Pennsylvania,* 125 U. S., 181, 189, the court, fully recognizing the right of the State to require license fees as a condition of doing business in the State, said:

"The plaintiff in error is not a corporation within the jurisdiction of Pennsylvania. The office it hires is within such jurisdiction, and on condition that it pays the required license tax, it can claim the same protection in the use of the office that any other corporation having a similar office may claim. It would then have the equal protection of the law so far as it had anything within the jurisdiction of the State, and the constitutional amendment requires nothing more. The State is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction by such corporation of interstate or foreign commerce. It is not every corporation, lawful in the State of its creation, that other States may be willing to admit within their jurisdiction, or consent that it have offices in them; such, for example, as a corporation for lotteries. And even where the business of a foreign corporation is not unlawful in other States,

the latter may wish to limit the number of such corporations, or to subject their business to such control as would be in accordance with the policy governing domestic corporations of a similar character. The States may, therefore, require for the admission within their limits of the corporations of other States, or of any number of them, such conditions as they may choose, without acting in conflict with the concluding provision of the first section of the Fourteenth Amendment. As to the meaning and extent of that section of the amendment, see *Barbier* v. *Connolly*, 113 U. S., 27; *Soon Hing* v. *Crowley*, 113 U. S., 703; *Missouri* v. *Lewis*, 101 U. S., 22, 30; *Missouri Pacific Railway Co.* v. *Humes*, 115 U. S., 512; *Yick Wo* v. *Hopkins*, 118 U. S., 356; *Hayes* v. *Missouri*, 120 U. S., 68.

"The only limitation upon this power of the State to exclude a foreign corporation from doing business within its limits, or hiring offices for that purpose, or to exact conditions for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the Federal government, or where its business is strictly commerce, interstate or foreign. The control of such commerce, being in the Federal government, is not to be restricted by State authority."

This language is obviously to be read in connection with the facts of that case and has no application to the case at bar.

In *New York* v. *Roberts*, 171 U. S., 658, 663, the fact that the tax imposed was applicable to domestic as well as foreign corporations, was made a ground of decision, and that there was no purpose to discriminate "between New York corporations and those of other States to the detriment of the latter." The cases collected in the dissenting opinion

by Mr. Justice HARLAN (Mr. Justice BROWN concurring) show that the rule is well settled that there can be no discrimination as between citizens, persons or merchandise between the several States, subject only to the consideration conceded above that the State may prescribe conditions of admission to its limits as against a foreign corporation. *Blake* v. *McClung,* 172 U. S., 239, 255, is authority for the proposition under discussion, for if unconstitutional requirements cannot be made as conditions of admission, then certainly when no conditions are prescribed and the foreign corporation takes title, discrimination in taxation cannot be made. The mere assertion of a claim in court may not bring a person within the jurisdiction of the State. This court has, as we have shown, frequently held that the imposition of a tax does bring such person within the jurisdiction of the State. This makes any extended examination of *Blake* v. *McClung* unnecessary.

In *Orient Ins. Co.* v. *Daggs,* 172 U. S., 557, 566, the court said:

> "That which a State may do with corporations of its own creation it may do with foreign corporations admitted into the State. This seems to be denied, if not generally, at least as to the plaintiff in error. The denial is extreme and cannot be maintained. The power of a State to impose conditions upon foreign corporations is certainly as extensive as the power over domestic corporations, and is fully explained in *Hooper* v. *California,* 155 U. S., 648, and need not be repeated."

If discriminations in matters of taxation as between domestic and foreign corporations be permitted in the States, then all the evils foreseen and pre-

dicted by the court with reference to discriminations between citizens or in commercial regulations are sure to follow. The facts leading to the adoption of the constitution so often urged as arguments against the existence of such right of discrimination on the part of the States, are equally applicable to the present question; most of our commercial, industrial, religious and charitable interests are managed and represented through corporate organization; few of these are confined in their activities to the limits of a single State. The benevolence of our citizens is hedged in by no such narrow limits; permitted under the commerce and citizenship clauses to travel without restriction throughout our broad domain, it is common experience that citizens own property in many States other than the one of citizenship. If, as this court said (*Yick Wo* v. *Hopkins*, 118 U. S., 356, 369), this clause of the Fourteenth Amendment constitutes "a pledge of the protection of equal laws," it cannot remain so if the court now declares that the citizen or corporation (person) of one State cannot succeed to property in another State upon equal terms with the citizen or person of the State where the property is situated, taking a succession of like amount and for the same ends.

It remains to consider some of the cases which were supposed by the court below to require a contrary decision. We do this not because we suppose this court will review the State Supreme Court upon the mere question of the construction of the State statute, but to make plain the fact that the federal question was not raised except in the Humphrey's case.

We concede the rule to be in acts for general taxation that "where the law provides for the exemption of corporations or associations from taxation, it means to include domestic only, and not foreign corporations." We repeat that the Act in question establishing the exemption does not purport to exempt persons or corporations, but does exempt property used for a certain purpose. It will also appear that the decisions upon which the learned counsel rely were reached in the construction of statutes in no respect similar to the one now under consideration—it must be said, also, with all respect, that in some cases the learned courts have not had in mind, apparently, the well recognized distinctions between a general and special tax. *People* v. *Western Seaman's Friend Society*, 87 Ill., 246, involved a claim of exemption from a general property tax, and the court did not consider, and had no occasion to consider, any question of exemption from a special tax or burden. The rule is correctly stated that under the constitutional provision requiring all taxes to be imposed equally upon the property of persons and corporations, exemptions from such burdens are to be construed strictly, and not extended by judicial construction to embrace other property than is plainly expressed in the law. There were reasons also for holding the property there involved subject to taxation, found in the fact that the legal title was in the name of an individual, and was not used wholly "for purely public charity." The court, construing this language, was of the opinion that it was designed to embrace such institutions as are founded and maintained by the State, as contradistinguished

from those founded by private enterprise. The case is a recognition of the rule more succinctly stated, perhaps, in *People* v. *Graceland Cemetery Co.*, 86 Ill., 336, that

> "the true spirit of our laws requires that all property should bear its just proportion of the burden of taxation, and where an exception is made in favor of a corporation, justice demands that it should show clearly a compliance with the terms and spirit of the act exempting it from taxation before it can be permitted to escape a duty incumbent equally upon every citizen."

In *Cotlin* v. *Trinity College*, 113 N. Y., 133, the question was whether two legacies, one to a church and the other to a college, were entitled to exemption upon the ground that they were included within the term "incorporated companies," as defined by general law. The collateral inheritance tax act (Chap. 713, Laws 1887), among other things, subjects to its provisions all property which shall pass by will to any "body politic or corporate * * * other than to * * * the societies, corporations and institutions now exempted by law from taxation." One legacy was to Trinity College, a Connecticut corporation, incorporated in 1823, located at Hartford, in that State, and the other was to St. Paul's Protestant Episcopal Church of Poughkeepsie, a religious society of New York, incorporated under the general act for the incorporation of religious societies, passed in 1813. The court said (p. 137):

> "The law regulating the taxation of corporations, in the absence of special legislation, is to be found in the general statutes of the State. The general rule of taxation is declared in Sec-

tion 1, Title I, Chapter 13, Part 1, of the Revised Statutes. This section declares that 'all lands and all personal estate within the State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified.'

"By this section all the real and personal estate of corporations is taxable, unless exempted in whole or in part by subsequent provisions of the chapter. When, therefore, a corporation not exempted from taxation by its charter, or some special enactment, but governed by the general law, claims exemption, it must be able to point to some provision in Chapter 13, or to some amendment which takes it out of the general rule declared in Section 1, or else its claim must be disallowed.

"The counsel for the defendant, conceding this to be the rule, insists that the personal property of incorporated colleges and religious societies in this State is exempted from taxation by the seventh subdivision of Section 4 of Title 1, Chapter 13, which section specifies the property exempt from taxation, the specification in the seventh subdivision being, 'the personal property of every incorporated company not made liable to taxation on its capital, in the fourth title of this chapter.'

"This contention assumes that incorporated colleges and religious societies are incorporated companies within this subdivision. By reference to this fourth title it will be found that it deals exclusively with the subject of taxation of moneyed or stock corporations, and contains no reference to the taxation of charitable, religious, literary or other corporations or institutions not organized for business purposes; and this class of corporations is not made liable by that chapter to any taxation whatever, either on their real or personal estate."

And after pointing out that other provisions of the same act demonstrated that subdivision 7, above quoted, had no such broad and sweeping construction as was contended by the defendants, the court continued:

"But coming more directly to the consideration of subdivision 7, and construing it in the light of the antecedent legislation in this State on the subject of taxation, and also in connection with Chapter 4, to which it refers, we are of the opinion that the words *incorporated companies,* used in that subdivision, were intended to designate only business and stock corporations which, by Chapter 4, were, under the special circumstances therein stated, exempted from taxation on their capital, and that they do not embrace incorporations not having a capital, or not being moneyed or stock corporations using their capital for the purpose of income or profit. * * * (p. 141). It is plain we think that the phrase *incorporated companies* did not include incorporations for religious, literary or charitable purposes. These words would be quite inapt to describe an incorporated college or an incorporated church or hospital or eleemosynary society. This construction renders the different subdivisions of Section 4 harmonious and consistent. * * * (p. 142). We know of no general statute exempting the personal property of religious societies or colleges from taxation, and we are of opinion that neither St. Paul's Church nor Trinity College was 'exempted by law from taxation' within the Collateral Inheritance Act of 1887.

"Trinity College, as has been stated, is exempted from taxation by the law of Connecticut. It has no exemption under the laws of this State, and it seems plain that the words 'now exempted by law,' in the Act of 1887, refer to exemptions under our laws, and that exemption of a foreign corporation from taxation under

> the laws of the jurisdiction of origin does not withdraw it from the operation of the inheritance tax law."

In re Prime's Estate, 136 N. Y., 347, involved the construction of the amendments of 1890 and 1891 to the Act of 1887. By the Act of 1890 religious, educational, bible, missionary, charitable and other specified corporations were forbidden to hold property exceeding in value three million dollars, and it was provided that the personal estate of such corporations within the limits named should be exempt from taxation. The Act of 1891, as to exemption of corporations from the collateral inheritance tax was the same as the Act of 1887, except that the words "or from collateral inheritance tax" were added. The court will note that these acts and amendments are all statutes providing for the incorporation of New York corporations and defining the powers and privileges. The court held that the exemption was not intended to be broader than the act itself, and must therefore be confined to New York corporations. The court said (p. 359):

> "It seems very plain that the purpose of the original Act of 1889, and of the amending Act of 1890, was to regulate and define the corporate powers and privileges of the domestic corporations only. They are acts conferring and regulating corporate capacity and privileges. The power of corporations to take and hold property is a corporate power and depends upon their charters. The law of this State cannot enlarge or change the powers of a foreign corporation. They are solely those given by the law of the domicil. * * * (p. 360). In general we are of the opinion that a statute of a State granting powers and privileges to corporations must, in

the absence of plain indications to the contrary, be held to apply only to corporations created by the State, and over which it has the power of visitation and control. Such is the natural interpretation of such legislation, in the absence of contrary intention appearing on the face of the Act. The legislature, in such cases, is dealing with its own creations, whose rights and obligations it may limit, define and control. * * * (p. 362). A general law of the State prohibiting corporations from exercising particular powers will operate upon foreign corporations, not because the act binds such corporations *ex proprio vigore*, but for the reason that their exercise of such powers here would violate the public policy of the State, indicated by the general restraint imposed upon our own corporations. It is the policy of society to encourage benevolence and charity. But it is not the proper function of a State to go outside of its own limits and devote its resources to support the cause of religion, education or missions for the benefit of mankind at large. The argument may have force that the State might, consistently with its proper function, give immunity from taxation to some of the foreign corporations engaged in the work of education or charity. But, however this may be, we are convinced that the statute of 1891 has no application to foreign corporations; and, having reached that conclusion, our duty is ended."

In re Balleis Estate, 144 N. Y., 132, is to the same effect.

It seems evident that a construction of statutes regulating domestic corporations and specifying that certain of such corporations shall be exempt, can throw no light upon the construction of a statute exempting certain property when passing to certain defined uses and not pretending to deal with the tak-

ers or holders of such property except in one instance, viz., a corporation authorized to divide profits among its members.

United States v. *Perkins,* 163 U. S., 624, likewise referred to in the opinion of the court below, is without importance in this discussion. There were two points involved in that case: *First,* is an inheritance tax a tax upon property? and it was held not to be, but a tax upon the right to succeed to property. *Second,* the statute of New York exempted from such tax the property of certain religious, educational, charitable and reformatory institutions, and it was held that the United States as a political or governmental corporation was not within any of these descriptions, and a gift to it was not therefore exempt.

In *Minot* v. *Winthrop,* 162 Mass., 113, the bequests were to churches located in New York. The Massachusetts statute exempted charitable institutions, "the property of which is exempt by law from taxation." The court held that the phrase meant "the property of which is exempt by law *in Massachusetts* from taxation," and that a church in New York, or a college in Maine, did not fulfill the description, and that legacies to them were not exempt. *Rice* v. *Bradford,* 180 Mass., 545, is to the same effect.

In *Alfred University* v. *Hancock* (P. C., N. J.), 46 Atl., 178, there was involved the construction of the New Jersey inheritance tax law, and the question whether a bequest by a citizen of that State to Alfred University, an institution located in Allegheny County, New York, was subject thereto. It was held

that the university was a charitable institution, but was not within the exemptions of the statute, which were held to be limited to domestic charities. The act under which the decision was reached provided (Ch. CCX, Laws N. J., 1894):

> "all property which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while being a resident of the State, and all property which shall be within this State, and any part of such property, and any interest therein or income therefrom, which shall be transferred by inheritance, distribution, bequest, devise, deed, grant, sale or gift aforesaid, made or intended to take effect in possession or enjoyment after the death of the intestate, testator, grantor or bargainor, to any person or persons, or to a body politic or corporate, excepting churches, hospitals and orphan asylums, public libraries, bible and tract societies, and all religious, benevolent and charitable institutions and organizations, in trust or otherwise, * * * shall be subject, etc."

The decision in *Humphreys* v. *State,* 70 Oh. St., 67 (s. c., 101 Am. St. Rep., 888), is cited as an authority against our contention. The exemption in that case extended to property or interests in property transmitted "to or for the use of any institution in said State for purposes of purely public charity, or other exclusively public purpose." It was held that a foreign charitable corporation was not within the description of "any institution in said State," and that the imposition of an inheritance tax upon foreign charitable corporations operating to some extent within the State as to property received by them therein by gift, bequest or devise, is not unconstitutional as an unlawful discrimination against them or as denying them the equal protection of the law.

The principle so often asserted by this court that the imposition of a tax necessarily implies that the object, whether a person, property or a right, is within the jurisdiction of the State imposing such a tax, is wholly ignored by the court.

Its conclusion is based upon the cases we have already examined, and if we are correct in our contention that such cases furnish no justification for the conclusion reached upon the precise question here under discussion, it follows that the decision in *Humphreys* v. *State* is erroneous.

We concede that, as the court says, the legislature has the right in laying taxes to classify corporations.

We deny the conclusions drawn from this premise that in making such classification the line may be drawn at the State line and that it is competent for the State to impose one rate of taxation upon the property owned or taken by a domestic corporation, and another rate upon property so owned or taken by a foreign corporation of precisely the same character as the domestic corporation.

It is that kind of discrimination which is forbidden by the clause of the Fourteenth Amendment inhibiting any State from denying to any person within its jurisdiction the equal protection of the laws.

It is stated in appellee's brief (pp. 7, 44) that if the amendatory act of 1901 as construed by the Supreme Court of Illinois is repugnant to the Fourteenth Amendment, then the judgment of the Supreme Court of Illinois should be affirmed, because it is said the right of plaintiff in error to exemption from the tax must fail with the act.

This proposition and conclusion can scarcely have been seriously advanced. We are constrained to believe that counsel are attempting to be facetious.

No one doubts that the language used by the law-making power is adequate to exempt all property, the beneficial use of which is devised for religious, educational or charitable purposes. The Supreme Court of Illinois has held that a discrimination is made, an inequality created in the benefits conferred by this act as between corporate persons of Illinois and corporate persons of Kentucky coming into the succession. To this we interpose the Fourteenth Amendment as guaranteeing to these persons the equal protection of the laws. Manifestly, if this court sustains our contention, the discrimination against the plaintiff in error will be void, not the exemptions authorized by the act of 1901.

Respectfully submitted.

CHARLES H. ALDRICH,
HENRY S. MCAULEY,
Attorneys for Plaintiff in Error.

LAWRENCE MAXWELL, JR.,
Counsel.